

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 4157 of 2015 (T)

PETITIONER:

**M/S.HOTEL HILLS PARK, KUMBAZHA,
PATHANAMTHITTA DISTRICT,
REPRESENTED BY ITS MANAGING PARTNER,
SUNOJ KURIAN, AGED 31 YEARS, S/O P.J. KURIAN.**

**BY SRI.C.C.THOMAS (SENIOR ADVOCATE)
ADVS.SRI.M.G.KARTHIKEYAN
SRI.NIREESH MATHEW**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY,
TAXES (A) DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM-695001.**
- 2. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM-695001.**
- 3. THE DEPUTY COMMISSIONER OF EXCISE,
PATHANAMTHITTA-691001.**

BY GOVERNMENT PLEADER SMT.C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 4157 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1: PHOTOCOPY OF THE JUDGMENT DATED 11.2.2014 IN
 WPC NO.10340/2013 PASSED BY THIS HON'BLE COURT.**
- EXHIBIT P2: PHOTOCOPY OF THE ORDER GO(RT)NO.659/2014/TD DATED 26.8.2014
 PASSED BY THE IST RESPONDENT.**
- EXHIBIT P3: PHOTOCOPY OF THE ORDER, GO(RT)NO.793/2014/TD
 DATED 1.10.2014 PASSED BY THE IST RESPONDENT.**
- EXHIBIT P4: PHOTOCOPY OF THE NOTIFICATION, GO(P)NO.141/2014/TD
 DATED 27.8.2014 ISSUED BY THE GOVT. OF KERALA.**
- EXHIBIT P5 : PHOTOCOPY OF THE REPRESENTATION DATED 11.2.2015 SENT TO
 THE RESPONDENTS 1 AND 2 BY REGISTERED POST WITH
 ACKNOWLEDGMENT DUE WITHOUT ANNEXURES.**
- EXHIBIT P6 : PHOTOCOPY OF THE ORDER DATED 8.10.2014 IN
 CONT.CASE(C)NO.496/2014 PASSED BY THIS HON'BLE COURT.**

RESPONDENT(S)' EXHIBITS: - **NIL**

/TRUE COPY/

P.A. TO JUDGE

mbr/

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 4157 of 2015

Dated this the 19th day of February, 2015

JUDGMENT

Heard the learned Senior Counsel for the petitioner and the learned Government Pleader for the respondents, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner, a Four Star Hotel, when submitted an application on 03.12.2012 for issuance of FL-3 licence; despite the recommendation of all the authorities concerned, it was eventually rejected on 23.03.2013 by the first respondent. Aggrieved thereby, the petitioner filed W.P. (C) No. 10340/2013 and invited Exhibit P1 judgment, through which this Court directed first and second respondents to process the petitioner's application without taking into account the subsequent amendment.

3. The record reveals that when the respondent authorities had not processed the petitioner's application in compliance with Exhibit P1 judgment, the petitioner filed Cont. Case (C) No. 496/2014 and invited Exhibit P6 judgment. At any rate, while the contempt case was pending, the first respondent passed Exhibit P3 order declaring that the petitioner is eligible to have FL-3 licence as recommended by the Excise Commissioner and the application for FL-3 licence submitted by the petitioner was accordingly allowed in compliance with the judgment of this Court. Nevertheless, the first respondent further recorded the eventual rejection in the following words:

"7. However since the Abkari Policy for the year 2014-15, has been declared and the Foreign Liquor Rules has been amended declining FL3 licence to hotels except those which have 5 star classification, the issuance of licence to the applicant's hotel is withheld."

4. Assailing Exhibit P3, the petitioner has filed the present writ petition.

5. The learned Senior Counsel, Sri. C.C. Thomas, has strenuously contended that Exhibit P3 cannot be sustained in

the light of clear direction given earlier in Exhibit P1 judgment. That apart, he has also submitted that subsequent to Exhibit P3, this Court rendered a judgment in **Xavier's Residency v. State of Kerala** [2014 (4) KLT 419] on 30.10.2014, i.e. subsequent to Exhibit P3 declaring that apart from Five Star Hotels even the Four Star Hotels, to which category the petitioner belongs is also entitled to FL-3 licence. In sum and substance the submission of the learned Senior Counsel is that, in the light of the ratio laid down in **Xavier's Residency** (*supra*), there shall not be any impediment for the first respondent to process the petitioner's application. He has also submitted that in the light of the ratio laid down in **Xavier's Residency** (*supra*), the petitioner submitted Exhibit P5 application on 11.02.2015, which is required to be considered by the first respondent in accordance with law.

6. The learned Government Pleader, on her part, has submitted that **Xavier's Residency** (*supra*) has been appealed against and the matter is pending before the learned Division Bench of this Court. According to her, in the light of the pendency, it cannot be said that the ratio laid

down in **Xavier's Residency** (*supra*) has attained finality. Since the issue is going to be determined, contends the learned Government Pleader, in a few days by learned Division Bench, at this juncture issuing any judicial directive to the respondents to consider Exhibit P5 application may not serve any process.

7. I am afraid, once this Court, per a learned Single Judge, declares the law that binds all the authorities concerned, including a co-equal bench of this Court. So long as the decision has not been reversed by a larger Bench, all the actions of the authorities shall be moulded in accordance with the law laid down therein. In other words, mere pendency of the writ appeal cannot come in the way of the operation of the judgment rendered by a learned Single Judge. Needless to observe that in course of time, if there is any interdiction of the ratio of the learned single Judge by a larger Bench, whatever orders that have been passed in the interregnum may be subservient to the bind outcome.

8. In the facts and circumstances, I see force in the contention of the learned Senior Counsel that the respondent authorities cannot refuse to consider the petitioner's claim

for FL-3 licence on a premise that a writ appeal is pending.

9. Having regard to the respective submissions of the learned Senior Counsel for the petitioner and the learned Government Pleader, this Court, apart from setting aside Exhibit P3 to the extent of the decision taken by the first respondent as has been set out in paragraph 7 therein, further directs the first respondent to consider petitioner's Exhibit P5 application, keeping in view the ratio laid down in **Xavier's Residency** (*supra*) and pass appropriate orders thereon, as expeditiously as possible, at any rate, within a period of six weeks from the date of receipt of a copy of this judgment.

With the above observation, this writ petition is disposed of. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-